



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 18, 1993

Ms. Ann Diamond
Assistant District Attorney
Tarrant County
Justice Center
401 W. Belknap
Fort Worth, Texas 79196-0201

OR93-191

Dear Ms. Diamond:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 18671.

The Tarrant County Sheriff's Department (the "department") has received a request concerning the department's operation of the county courthouse. Specifically the requestor seeks:

- A. Any document comprising a full or partial list of items which may not be brought into any, some or all Tarrant County, Texas facilities.
- B. Any document indicating in any way the amount of discretion allowed to any elected or appointed official or employee of Tarrant County, Texas in denying access to any or all person(s) to any Tarrant County, Texas facility based on the possession by that or those person(s) of an item not illegal under any applicable local, state or federal statute, code or ordinance.
- C. Any document signed by any presiding judge of any court of any jurisdiction located in the facilities of Tarrant County Texas mandating or claiming to mandate what items may not be brought into parts of said facility other than those parts of said facility assigned to the normal operation of said court.
- D. Any document giving the names of the [department] personnel assigned to security duty at the first floor entrance from Weatherford

Street of the Tarrant County Courthouse at 1350 on January 13, 1993.

E. Any document defining the phrase "standing order" as it is used within the custom, policy and usage of the [department.]

F. Any document making any mention whatsoever of the right or duty of an elected or appointed official or employee of Tarrant County, Texas to verbally issue what official or employee characterizes as "standing order(s)" to an individual member of the general public.

G. Any document establishing or maintaining a code of conduct or standard of behavior by whatever name, binding on elected and appointed officials and/or employees of the [department.]

H. Any document originated pursuant to the training of elected or appointed officials and/or employees of the [department] in the general use and the setting, calibration or any other process intended to maintain the proper performance of machines used by said department to detect certain items in the possession of people entering facilities of Tarrant County, Texas.

You state that the department does not have any documents that would respond to requests "B," "C," "E," and "F." A governmental body is not required to create information that does not exist to respond to an open records request. Open Records Decision No. 572 (1990). You state that there are no records that "specifically" respond to request "D," but that there is "a list of general assignments."¹ We did not receive any documents to review in reference to request "D." You state that the information in request "G" has already been provided to the requestor. You claim the information responsive to the remaining requests, "A" and "H," is confidential under sections 3(a)(1), 3(a)(3), 3(a)(8), and 3(a)(11) of the Open Records Act.

Section 3(a)(8) excepts

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

¹A governmental body must make a good faith effort to relate a request to information within its possession. Open Records Decision No. 561 (1990) at 8. A "general assignments" list would seem to be responsive as "any document giving the names of the [department] personnel assigned" to the courthouse.

The test for determining whether records are excepted from public disclosure under section 3(a)(8) is whether release of the records would unduly interfere with the prevention of crime and the enforcement of the law. Open Records Decision No. 553 (1990) at 4 (and cases cited therein). A governmental body claiming the "law enforcement" exception must reasonably explain how and why release of the requested information would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 434 (1986) at 2-3.

Request "H" seeks information regarding the department's security arrangements for the courthouse. The county sheriff's department is the law enforcement agency having "charge and control of the county courthouse." Local Gov't Code § 291.003. You inform us that "[a]fter the shooting death of two attorneys in a Tarrant County courtroom this past year . . . the security in place in [the] courthouses and other county buildings was increased," and that "[i]t is imperative that the operational information, policies, and procedures surrounding the security provisions be kept from disclosure." We conclude that you have demonstrated that the release of the information relevant to request "H" could seriously impair the ability of the department to maintain the safety of persons entering the courthouse and hamper the efforts of the department to detect illegal weapons. *See generally* Open Records Decision No. 413 (1984) (sketch showing planned security measures for an execution is protected under section 3(a)(8) because its release could impair Texas Department of Correction's ability to maintain order during an execution.) Accordingly, you may withhold the information requested in request "H" under section 3(a)(8) of the Open Records Act.

Request "A" seeks a "full or partial list" of items that may not be brought into county facilities. A document entitled, "ATTACHMENT A: LISTING OF PROHIBITED WEAPONS," from the document entitled "INTERDEPARTMENTAL POLICY/PROCEDURE SECURITY SERVICES," is responsive to this request. We conclude that you have not adequately demonstrated that release of this information would undermine the legitimate interests of law enforcement, and the information does not supply an explanation on its face. We note that the information in "ATTACHMENT A" restates information from Penal Code sections 46.01, 46.04, and 46.06(a). We have previously ruled that the release of portions of a city's use of force policy based on "generally-known policies" such as Penal Code provisions, common-law rules, and constitutional limitations will not "unduly interfere with law enforcement and crime prevention." Open Records Decision No. 531 (1989) at 2-3. Accordingly, we conclude that you may not withhold "ATTACHMENT A" under the section 3(a)(8) exception to the Open Records Act. As we resolve this matter under section 3(a)(8), we need not address the applicability of sections 3(a)(1), 3(a)(3), or 3(a)(11).²

²"ATTACHMENT A" is not the type of information that may be withheld under sections 3(a)(1), 3(a)(3), or 3(a)(11). We reiterate that this information is merely a restatement of information found in Penal Code sections 46.01, 46.04, and 46.06(a).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-191.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/LBC/le

Ref.: ID# 18671
ID# 19240

Enclosures: Documents Submitted

cc: Mr. George Vernon Chiles
2800 Jennings
Fort Worth, Texas 76110
(w/o enclosures)